

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

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Research Paper on Right to Freedom of Online Speech in India.

Authored By-Utsav Bc

Abstract

Freedom of speech and expression is a fundamental right guaranteed through Art.19(1)(a) of the Indian constitution. But Art. 19(2) imposes reasonable restrictions on this fundamental right to protect the sovereignty and integrity of the State along with public order and security in the State. These reasonable restrictions have been misused several times to suppress people's freedom of expression by the government or its agencies to protect the political interests of specific individuals or groups. In *Shreya Singhal v. Union of India*, the freedom of online speech and expression was curtailed with the help of Sec.66 A of Information Technology Act, 2000 (IT act). The petitioners argued that the provisions of Sec. 66A were beyond the scope of permissible restrictions under Art. 19(2). The Supreme court agreed with the petitioner and struck down Sec. 66A of the IT Act, which expanded freedom of expression by narrowly interpreting the grounds for reasonable restriction. The court also read down Sec. 79 of the IT Act and ordered online intermediaries to take down content only if they had court or government authority orders. This case has become a landmark case relating to the protection of freedom of rights and expression.

Key Words: IT Act, Sec. 66A, Art. 19(2), Freedom of Speech

Introduction

Social media comprises basically of internet and mobile phone which are interactive Web 2.0 Internet-based applications tools for sharing and discussing information¹. Social Media is a blend of telecommunications, social interaction and technology which provides a platform to communicate through user-generated content such as pictures, music, films and words. All the interactions are through online interactions that is the lifeblood of social media. Social media includes web based and mobile technologies used to turn communication into interactive dialogue. Social media facilitates online social networks by connecting a user's profile with individuals or groups.

“Social media can be defined as any web or mobile based platform that enables an individual or agency to communicate interactively and enables exchange of user generated content”.

Social Media has become a very powerful tool for speech and expression as it has the ability to reach every nook and corner of the country. Within no time a person's message can be shared to a large audience without wasting resources through cost effective methods such as Facebook, Twitter and Instagram. Users of social media can connect to individuals anywhere in the world and can see their content². Social media is mainly being used to socialise, spread knowledge, express their opinions and to send their messages or views to the world. The easy accessibility of social media makes it an important part of freedom of speech and indirectly a part of fundamental rights.

¹<https://www.endnowfoundation.org/social-media-and-freedom-of-speech-and-expression-php/>

²SESHU, G. (2012). Poor Guarantee of Online Freedom in India. *Economic and Political Weekly*, 47(24), 14–16. <http://www.jstor.org/stable/23214889>

Legislations Related To Online Freedom Of Speech

Constitution of India:

Art. 19(1)(a): This article guaranteed the right to freedom of speech and expression as a fundamental right. The government has the responsibility to interpret this article positively, and the judiciary has a role in interpreting this article strictly as it is a fundamental right. In the Shreya Singhal case, this right was breached by using Sec. 66A of ITA³. The court observed that Section 66-A was vague and over-broad, and therefore fell foul of Article 19(1)(a) since the statute was not narrowly tailored to specific instances of speech that it sought to curb.

Art. 19(2): Reasonable restrictions are laid on Art. 19(1)(a) through this article. The article says the exercise of the rights can be curtailed by making laws or using existing laws if they are reasonable restrictions. Reasonable restrictions can be used to protect the sovereignty and integrity of India, for the security of the State, to maintain public order, decency or morality or concerning contempt of court, defamation or incitement to an offence according to Art. 19(2). The court held that the 'public order' restriction under Article 19(2) of the Constitution would not apply to cases of 'advocacy', but only to 'incitement', specifically, incitement which has a proximate relation to public disorder.

The grounds on which the legislature can make laws to impose reasonable restrictions under Art. 19(2) are – a) defamation, b) public order, c) integrity and sovereignty of India, d) security of the state, e) incitement to offence,

³<https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>

f) contempt of court, g) decency and morality and h) friendly relations with foreign states.

Information Technology Act, 2000

Sec. 66A: This section was not an initial part of the IT act and was later created through an amending act. The act lays down punishment for sending offensive messages through computer resources or communication devices. Information that was offensive or false was sent to create enmity, hatred, insult, injury, danger, annoyance, or inconvenience that could lead to punishment⁴. The punishment prescribed was up to three years imprisonment and a fine.

Sec. 79: According to rule 3, under this section, intermediaries such as Facebook, WhatsApp and Twitter were supposed to remove or block content upon receiving information from the government. The intermediaries also had the power to remove the content if approached by an aggrieved party. The court observed that “the internet gives any individual a platform which requires very little or no payment through which to air his views.” The intermediaries were also protected from liability for not taking down posts after the judgement as they required court or government orders to take down posts. The Judgment has placed limits on the private censorship of Intermediaries as a Court order or notification from a government authority or agency would be required before content removal.

Shreya Singhal Case

Police arrested two women who had posted against the state government for shutting down the city due to the death of Shiv Sena leader Bal Thakrey. Out of the two girls, one had just liked the post. The state police were empowered to make arrests without a warrant as the offences committed under Sec. 66A of the ITA were cognisable

⁴Brown, I. (2013). The Global Online Freedom Act. *Georgetown Journal of International Affairs*, 14(1), 153–160. <http://www.jstor.org/stable/43134395>

offences. Many arrests were made on the same lines for posting dissenting opinions against the government across the country. Sec. 66A had become a tool to suppress dissenting voices.

The police later left the arrested women, but they filed a writ petition arguing that Sec. 66 A of the ITA violated their fundamental right to freedom of speech and expression under Art. 19(1)(a) of the Indian constitution.

The Honourable Supreme Court judges RF Nariman and Chelameshwar gave a 52-page judgement which declared Sec. 66 A of ITA unconstitutional and void. The court also read down the rules relating to intermediaries in Sec. 79 of ITA. The court had once again strictly interpreted the fundamental rights. It was noted that Art. 19(1)(a) of the constitution⁵, which gives the freedom of speech and expression, may not be an absolute right but cannot be restricted if there are no reasonable grounds as mentioned in the constitution. The reasonable restrictions are mentioned in Art. 19(2) and are to be narrowly read without broad interpretation. The court held that Sec. 66 A was vague as there was no narrow definition of the terms it sought to curb. Therefore this section didn't come under reasonable restrictions, so the honourable court struck down Sec. 66 A. Court also found that it had a chilling effect on the freedom of speech. The law failed to establish a close relationship in protecting public order. The Court also held that the government could not prove that Sec. 66 A intends to avoid communications that provoke the commission of an offence. Sec. 79 and Rule 3(4) was read down by the court to remove the liability of intermediary service providers. The judgement said that intermediaries had no power to take down online content and were supposed to act only on court or government orders.

⁵<https://www.legalserviceindia.com/legal/article-426-social-media-and-freedom-of-speech-and-expression.html>

The apex court has expressed its concerns over Sec. 66 A of the IT act through its judgment in this case. Justice R F Nariman and Justice J Chelameshwar had said the provisions of the IT act ‘clearly affected’ the fundamental rights guaranteed under Art. 19 (1) of the Indian constitution. The bench observed that there are many views which maybe offensive to certain people and the same not offensive to another set of people. The court while describing the provisions of the act said they are grossly offensive, annoying and inconvenient. The provisions are arbitrary and unclear which can be used biasedly towards citizens by law enforcement agencies.

Usage Of The IT Act, 2000

The right to Freedom and Speech is a basic right that should be part of every democratic country. This right gives the people freedom to criticise the government, making it a necessary right to save democracy. The ruling governments usually dislike these rights, and they try to find methods to suppress condemning voices. Sec.66A was an amendment made to the IT Act, 2000, to suppress politically dissenting voices. The provisions of the section were used to produce high profile arrests without a warrant as the crime was cognisable under the IT Act⁶. In the Shreya Singhal case, two girls were arrested for just posting against the government for shutting down the city on the death of Shiv Sena leader Bal Thakrey. The second girl involved in the case had just liked the Facebook post. Sec. 66A was vague and had no proximate relation causing disturbance to public order or incitement to commit an offence. Therefore the supreme court struck down Sec. 66 of ITA. The apex court made it very clear that internet platforms could be requested only by the judiciary and law enforcing agencies to remove content from the internet platforms. This was a turning point in protecting Indian citizens online freedom of speech and

⁶Mathur, K. (1992). The State and the Use of Coercive Power in India. *Asian Survey*, 32(4), 337–349.
<https://doi.org/10.2307/2645150>

expression.

Though the court struck down the section, it is being used by the police and the lower courts. Uttar Pradesh government booked a youth under Sec. 66 A for criticizing the Chief Minister Yogi Adityanath on Facebook in 2017⁷. In 2020, a journalist was booked under the act for his tweets on the sculptures of the Sun Temple in Odisha.

The Supreme Court while hearing a plea by Peoples Union For Civil Liberties (PUCL) issued notices to all states, union territories and registrar general of high courts highlighting the use of Sec. 66A even though it was struck down and would be contempt of court if tried. The court observed that “ it is clear that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right”. Though the governments have tried to suppress voices courts through judgements like these have reaffirmed the fundamental rights in the citizens. Therefore the government should relook into the provisions of certain acts which restrict the freedom of speech and expression of citizens on social media.

Proposed Amendment And Remedies

The IT ministry under the Central government has released a draft amendment that issues guidelines for content hosting platforms to seek protection for 3rd party acts or contents. The amendment was mainly introduced to tackle obscenity, fake news and illegal content through the usage of automated filters. Removing content requires the platform to trace the originality of the message. Sometimes this can lead to tracing of messages on platforms such as WhatsApp even if there is nothing illegal and intern harm the rights of users.

⁷Mishra, N. K. (2008). GOVERNMENTAL THREATS FOR MEDIA FREEDOM : COMPARATIVE STUDY OF ASIAN COUNTRIES. *The Indian Journal of Political Science*, 69(1), 149–156. <http://www.jstor.org/stable/41856399>

Social media platforms have their own community standards which many a times block content that may not be offensive. They are often termed

inconsistent and arbitrary. The law should also mandate mechanisms that enable quick removal of content that is illegal or offensive. This would help avoid the circulation of such content and address the concerns of legitimate users. Companies that host content must maintain 100% transparency around political advertising. Law enforcement agencies should also explore existing tools to prevent the exploitation of data. The government should cooperate with internet platforms to identify and prevent the spread of disinformation. It should also educate users about how to spot and avoid getting duped by the disinformation. Government should take the advise of technological experts and study the rules adopted by other nations before policy making.



Conclusion

Social media censorship is clearly a very complex problem as on one hand there is rampant increase in illegal acts and on the other hand the law enforcing agencies are trying to regulate the citizens fundamental rights to protect their own interests⁸. However, the current cyber laws of India are not adequate to deal with the increasing usage of digital platforms. Even though there is a huge power base in the hands of the Government, it is not enough to check the activities on social media.

There is an immediate need for a committee to be formed which can draft some guidelines. We should take the services of technical experts and civil society experts, as well as the government, to investigate all aspects of the use and misuse of social media and recommend a suitable approach that does not jeopardise citizens' civil rights, particularly their freedom of speech and expression. The government needs to balance between protecting peoples fundamental rights and protecting the society from illegal activities but at the same time it also has a role to not misuse its powers to track citizens.

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⁸Tkacheva, O., Schwartz, L. H., Libicki, M. C., Taylor, J. E., Martini, J., & Baxter, C. (2013). *Internet Freedom and Political Space*. RAND Corporation. <http://www.jstor.org/stable/10.7249/j.ctt4cgd90>

